



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA-HQ-OAR-2014-0606; FRL-9942-64-OAR]

RIN 2060-AS27

Review of New Sources and Modifications in Indian Country: Extension of Permitting and Registration Deadlines for True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing three final amendments to the “Federal Minor New Source Review (NSR) Program in Indian Country” (we refer to this rule as the “Federal Indian Country Minor NSR rule”). We are amending the Federal Indian Country Minor NSR rule to extend the NSR minor source permitting deadline for true minor sources in the oil and natural gas sector from March 2, 2016, to October 3, 2016. We are also finalizing two amendments to conform the minor source registration deadline to the permitting deadline change.

DATES: The final rule is effective on **[Insert date of PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2014-0606. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted

material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact Mr. Christopher Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards (C304-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0823; fax number (919) 541-0072; email address: stoneman.chris@epa.gov. For questions about the applicability of this action to a particular source, please contact the appropriate EPA Regional contact for your state:

- EPA Region 5 (Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin) – Ms. Genevieve Damico, Air Permits Section, Environmental Protection Agency, Region 5, Mail Code AR-18J, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone (312) 353-4761; fax (312) 385-5501; email address: damico.genevieve@epa.gov.
- EPA Region 6 (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas) – Ms. Bonnie Braganza, Air Permits Section, Multimedia Permitting and Planning Division, Environmental Protection Agency Region 6, Mail Code 6MM, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202; telephone number (214) 665-7340; fax number (214) 665-6762; email address: braganza.bonnie@epa.gov.
- EPA Region 8 (Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming) – Ms. Claudia Smith, Air Program, Environmental Protection Agency Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202;

telephone number (303) 312-6520; fax number (303) 312-6520; email address: smith.claudia@epa.gov.

- EPA Region 9 (Arizona, California, Hawaii, Nevada, and Pacific Islands) – Ms. Lisa Beckham, Permits Office, Air Division, Environmental Protection Agency Region 9, AIR-3, 75 Hawthorn Street, San Francisco, California 94105; telephone number (415) 972-3811; fax number (415) 947-3579; email address: beckham.lisa@epa.gov.
- All other EPA Regions – Contact the permit reviewer for minor sources in Indian country for your EPA Region. You can find the list of the EPA permit reviewers at: <http://www.epa.gov/air/tribal/tribalnsr.html>. Scroll down to the heading, “Existing Source Registration,” and click on “Reviewing Authority” to access “Environmental Protection Agency’s Reviewing Authorities for Permits.”

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this final rule include owners and operators of true minor emission sources in all industry groups planning to locate or already located in Indian country. Categories and entities potentially affected by this action are expected to include, but are not limited to, the following:

TABLE 1 – SOURCE CATEGORIES AFFECTED BY THIS ACTION

Industry Category	NAICS Code ^a	Examples of Regulated Entities/ Description of Industry Category
Oil and Gas Production/Operations	21111	<p>Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and gas up to the point of shipment from the producing property</p> <p>Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and gas field gases</p>
Crude Petroleum and Natural Gas Extraction	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from reservoirs in which the hydrocarbons are semisolids
Natural Gas Liquid Extraction	211112	Recovery of liquid hydrocarbons from oil and gas field gases; and sulfur recovery from natural gas

Industry Category	NAICS Code ^a	Examples of Regulated Entities/ Description of Industry Category
Drilling Oil and Gas Wells	213111	Drilling oil and gas wells for others on a contract or fee basis, including spudding in, drilling in, re-drilling, and directional drilling
Support Activities for Oil and Gas Operations	213112	Performing support activities on a contract or fee basis for oil and gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and cleaning out, bailing, and swabbing wells
Engines (Spark Ignition and Compression Ignition) for Electric Power Generation	2211**	Provision of electric power to support oil and natural gas production where access to the electric grid is unavailable

^a North American Industry Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be potentially affected by this action. To determine whether your facility could be affected by this action, you should examine the applicability criteria in the final Federal Minor NSR Program in Indian Country (40 Code of Federal Regulations (CFR) 49.153), as well as the proposed Federal Implementation Plan (FIP)

applicability in 40 CFR 49.101.¹ If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr> and on the tribal NSR page at <http://www.epa.gov/air/tribal/tribalnsr.html>.

II. Background

In July 2011, the EPA finalized a rule that includes a minor NSR permitting program for sources in Indian country and a major source NSR permitting program for sources in nonattainment areas of Indian country. The minor source part of the permitting program is officially titled the “Federal Minor Source New Source Review Program in Indian Country,” but we generally refer to it as the “Federal Indian Country Minor NSR rule.”² We call a permit issued under this program a minor NSR permit. Under the rule issued in 2011, new and modified minor sources and major sources that make minor modifications, located in reservation areas of Indian country and other areas of Indian

¹ “Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country,” 80 FR 56554, September 18, 2015, <http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf>.

² The Federal Indian Country Minor NSR rule is a component of “Review of New Sources and Modifications in Indian Country, Final Rule” 76 FR 38747 (July 1, 2011) that applies to new and modified minor sources and minor modifications at major sources. It is codified at 40 CFR 49.151 – 49.161.

country for which tribal jurisdiction has been demonstrated, were required to obtain a permit prior to beginning construction (a pre-construction permit) beginning on September 2, 2014. On June 16, 2014, we extended the NSR minor source permitting deadline for true minor sources in the oil and natural gas sector from September 2, 2014, to March 2, 2016.³

Pursuant to section 553(d)(3) of the Administrative Procedure Act, the EPA finds that there is good cause to make this final rule effective upon publication in the **Federal Register**. At present, beginning March 2, 2016, new and modified true minor oil and natural gas sources subject to the Federal Minor New Source Review Program in Indian Country must obtain a permit prior to commencing construction. On September 18, 2015, the EPA proposed a FIP that would, among other matters, serve to satisfy this requirement.⁴ The EPA believes that the extension of the March 2, 2016, deadline in today's final rule is necessary to avoid imposing an unnecessary regulatory burden on these sources pending the EPA taking final action on the proposed FIP. In the absence of the extension, new and modified true minor sources in the oil and natural gas sector would need to obtain source-specific permits, thereby incurring a significant and potentially unnecessary burden. In order to avoid this circumstance, given the immediacy of the March 2, 2016 deadline, the EPA is making today's final rule effective upon

³ "Review of New Sources and Modifications in Indian Country Amendments to the Registration and Permitting Deadlines for True Minor Sources," U.S. Environmental Protection Agency, 79 FR 34231, June 16, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-06-16/pdf/2014-14030.pdf>.

⁴ "Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country," 80 FR 56554, September 18, 2015, <http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf>.

publication in the **Federal Register**.

III. Purpose

On September 18, 2015, the EPA published a notice of proposed rulemaking⁵ that included several amendments to the Federal Indian Country Minor NSR rule. In this action, we are finalizing only three of those amendments. We are finalizing the amendment to extend the permitting compliance deadline for true minor sources in the oil and natural gas sector operating or proposing to operate in reservation areas of Indian country and other areas of Indian country for which tribal jurisdiction has been demonstrated. We are also conforming the registration provisions to this extension with two additional amendments. We will address the other proposed changes to the Federal Indian Country Minor NSR rule, as well as the proposed FIP, in a separate final rulemaking. Today's changes are necessary to avoid the potentially unnecessary burden of sources in the oil and natural gas sector needing to obtain source-specific permits while we complete action on the proposed FIP. The changes will provide a level of certainty to the regulated industry, tribes and other parties pending completion of action on the proposed FIP.

IV. What final action is the EPA taking on amendments to the Federal Indian Country Minor NSR rule?

Today's final rule promulgates three amendments to the Federal Indian Country Minor NSR rule. We proposed other regulatory changes in our September 18, 2015,

⁵ "Review of New Sources and Modifications in Indian Country: Federal Implementation Plan for Managing Air Emissions from True Minor Sources Engaged in Oil and Natural Gas Production in Indian Country," 80 FR 56554, September 18, 2015, <http://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-21025.pdf>.

proposal, but are taking final action on only these three amendments.

First, we are revising the deadline under §49.151(c)(1)(iii)(B) by which new and modified true minor sources in the oil and natural gas sector that are located in (or planning to locate in) reservation areas of Indian country or other areas of Indian country for which tribal jurisdiction has been demonstrated must obtain a minor NSR permit prior to beginning construction. We are extending the deadline from March 2, 2016, to October 3, 2016, for all true minor sources (both new and modified true minor sources and minor modifications at existing major sources) within the oil and natural gas sector located in Indian country.⁶

Second, we are revising §49.151(c)(1)(iii)(A) to conform the registration deadline to the extended permitting deadline in §49.151(c)(1)(iii)(B).

Finally, we are revising §49.160(c)(1)(ii) to conform the registration deadline to the extended permitting deadline in §49.151(c)(1)(iii)(B).

V. Summary of Significant Comments and Responses

We received comments from three industry commenters on the permitting deadline extension (and associated registration requirements) in the September 18, 2015, proposed rule. The discussion below provides a summary of the comments, and our responses to those comments, that relate to the changes discussed in Section IV above and that we are addressing in today's final rule. The remaining comments on the September 18, 2015, proposed rule will be addressed in a separate final rulemaking.

⁶ Typically, sources in the oil and natural gas sources sector will be assigned to one of the following NAICS codes: 21111 Oil and gas production/operations; 211111 Crude petroleum and natural gas extraction; 211112 Natural gas liquid extraction; 213111 Drilling oil and gas wells; 213112 Support activities for oil and gas operations; and 221210 Natural gas distribution.

Two commenters supported the extension, while the third commenter was concerned that the extension would not provide adequate time to obtain required permits for affected facilities needing site-specific permits. The commenter maintained that turnaround times for site-specific permits typically extend beyond one year, which is a timeframe that would make it impossible to meet the October 3, 2016, deadline. The commenter recommended that an extension of 18 months would be the minimum needed to provide a reasonable assurance that all permits will be issued before the deadline.

The EPA is establishing October 3, 2016, as the revised permitting and registration deadline, and we do not believe that an extension beyond that date is necessary. The commenter has not provided any compelling information to indicate that a further extension is needed. Sources have been able to submit an application for a source-specific permit since the effective date of the Federal Indian Country Minor NSR rule. Therefore, in determining the length of the extension, we have not regarded as paramount whether the extension provides sufficient time to obtain a site-specific permit. If a site-specific application is still in process after October 3, 2016, nothing in the FIP that EPA proposed on September 18, 2015, would prevent such permit applications from proceeding past the extended date.

The proposed FIP would apply to new true minor sources and minor modifications at existing true minor sources in the production segment of the oil and natural gas sector that are locating in or expanding on Indian reservations or in other areas of Indian country over which tribal jurisdiction has been demonstrated. The FIP, if finalized as proposed, would satisfy the minor source permitting requirement under the Federal Indian Country Minor NSR rule. The FIP proposes to require compliance with

emission limitations and other requirements from certain federal emission standards as written at the time of construction or modification for a range of equipment and processes present at oil and natural gas production facilities. If the EPA finalizes the FIP before October 3, 2016, then we would have in place by October 3, 2016, a streamlined permitting option in the form of a FIP for new and modified oil and natural gas minor sources that want to construct or modify in Indian country.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060-0003. This action merely extends the deadline for when true minor sources in the oil and natural gas sector locating or located in areas covered by the Federal Minor New Source Review Program in Indian Country must obtain a site-specific minor source permit prior to commencing construction and register. It does not contain any new information collection activities.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An

agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact of streamlined permitting on small entities in promulgating the Federal Minor Source New Source Review Program in Indian Country (76 FR 38748, July 1, 2011). The EPA determined that that action would not have a significant economic impact on a substantial number of small entities. This action merely implements a particular aspect of the Federal Minor Source New Source Review Program in Indian Country. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. It simply provides an extension for sources to comply with the Federal Minor Source New Source Review Program in Indian Country. The Federal Minor Source New Source Review Program in Indian Country (and not this action) imposes the obligation that true minor sources in areas covered by the rule obtain a minor source NSR permit. This action merely extends the deadline for meeting that obligation.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of

government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA conducted outreach on the September 18, 2015, proposed rule via on-going monthly meetings with tribal environmental professionals. The EPA offered consultation on the Advance Notice of Proposed Rulemaking that preceded the proposal to elected tribal officials and the following tribes requested a consultation, which was held on July 18, 2014, with the tribes and/or their representatives: MHA (Mandan, Hidatsa and Arikara) Nations (Three Affiliated Tribes), Ute Tribe of the Uintah and Ouray Reservation, and Crow Nation.⁷

At the consultation, the tribes present expressed three main concerns regarding federal regulation of oil and natural gas activity in Indian country. First, the tribes noted that many areas of Indian country are facing difficult economic circumstances and are in need of economic development to improve the quality of life of tribal members; revenue from oil and natural gas activity in many areas provides that economic development. Second, they stated that oil and natural gas activity in Indian country is already regulated by other federal government agencies and that the EPA does not need to add to the burden. The tribes expressed a desire to manage their own resources without undue interference from the federal government. Third, the tribes expressed a need for

⁷ “Managing Air Emissions from Oil and Natural Gas Production in Indian Country,” 79 FR 32502, June 5, 2014, <https://www.gpo.gov/fdsys/pkg/FR-2014-06-05/pdf/2014-12951.pdf>.

additional resources so that they can implement their own environmental programs in their lands.

We will continue to provide outreach to tribal environmental professionals and offer to consult with tribal leadership as we further finalize the September 18, 2015, proposed action.

G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. This action implements certain aspects of the Federal Minor Source New Source Review Program in

Indian Country.

Our primary goal in developing this program is to ensure that air resources in areas covered by the Federal Minor Source New Source Review Program in Indian Country will be protected in the manner intended by the Clean Air Act (CAA). This action will help facilitate implementation of the Federal Minor Source New Source Review Program in Indian Country and provide the EPA sufficient time to take final action on a proposed FIP with a comprehensive set of control requirements for new and modified true minor sources in the production segment of the oil and natural gas sector. Through the proposed FIP, we seek to establish a mechanism that provides an effective and efficient method for implementing a preconstruction permitting program for true minor sources in areas covered by the Federal Minor Source New Source Review Program in Indian Country, helping promote economic development by minimizing delays in new construction, and providing a process comparable to those programs operated outside of Indian county.

K. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 *et seq*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal**

Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2). This rule will be effective upon date of publication, *i.e.*, on **[INSERT DATE of PUBLICATION IN THE FEDERAL REGISTER]**.

L. Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Under section 307(b) (2) of the CAA, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 12, 2016.

Gina McCarthy,
Administrator.

For the reasons set forth in the preamble, EPA is amending 40 CFR part 49 as follows:

**PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND
MANAGEMENT**

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Section 49.151 is amended by revising paragraphs (c)(1)(iii)(A) and (B) to read as follows:

§49.151 Program overview.

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(c) * * *

(1) * * *

(iii) * * *

(A) If you own or operate an existing true minor source in Indian country (as defined in § 49.152(d)), you must register your source with the reviewing authority in your area by March 1, 2013. If your true minor source is not an oil and natural gas source, and you commence construction after August 30, 2011, and before September 2, 2014, you must also register your source with the reviewing authority in your area within 90 days after the source begins operation. If your true minor source is an oil and natural gas source, and you commence construction after August 30, 2011, and before October 3, 2016, you must register your source with the reviewing authority in your area within 90 days after the source begins operation. You are exempt from these registration requirements if your true minor source is subject to §49.138.

(B) If your true minor source is not an oil and natural gas source and you wish to

begin construction of a new true minor source or a modification at an existing true minor source on or after September 2, 2014, you must first obtain a permit pursuant to §§49.154 and 49.155 (or a general permit/permit by rule pursuant to §49.156, if applicable). If your true minor source is an oil and natural gas source and you wish to begin construction of a new true minor source or a modification at an existing true minor source on or after October 3, 2016, you must first obtain a permit pursuant to §§49.154 and 49.155 (or a general permit/permit by rule pursuant to §49.156, if applicable). The proposed new source or modification will also be subject to the registration requirements of §49.160, except for sources that are subject to §49.138.

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3. Section 49.160 is amended by revising paragraph (c)(1)(ii) to read as follows:

§49.160 Registration program for minor sources in Indian country.

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(c) * * *

(1) * * *

(ii) If your true minor source is not an oil and natural gas source and you commence construction after August 30, 2011, and before September 2, 2014, you must register your source with the reviewing authority within 90 days after the source begins operation. If your true minor source is an oil and natural gas source, and you commence construction after August 30, 2011, and before October 3, 2016, you must register your source with the reviewing authority within 90 days after the source begins operation.

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[FR Doc. 2016-03623 Filed: 2/23/2016 8:45 am; Publication Date: 2/24/2016]